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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/756,945	01/13/2004	Sergio Landau	BJT 334A	3294

23581 7590 10/04/2006

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EXAMINER

HUH, BENJAMIN

ART UNIT	PAPER NUMBER
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3767

DATE MAILED: 10/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	Application No. 10/756,945	Applicant(s) LANDAU ET AL.	
	Examiner Benjamin Huh	Art Unit 3767	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10 July 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 8-11 and 13-16 is/are rejected.
- 7) ☒ Claim(s) 5-7, 12 and 17-20 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
       Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
       Replacement drawing-sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4 & 8-11, & 13-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mizzy et al (US Patent No. 3859996) in view of Hogan (US Patent No. 6264637) and Landau (US Patent No. 4592742). Mizzy discloses an injector including a syringe assembly to expel fluid out a nozzle, and a pressurized gas delivery mechanism. Mizzy does not disclose a marking assembly to place a mark near an injection site nor a needle-free injector. Hogan teaches using a marking assembly fluidly coupled to the injection device to mark an injection site having a fluid reservoir 81, nib 85, and an exhaust gas pathway. The gas not directed to the injector assembly is considered the exhaust gas. See figures 1-4; col. 6 lines 40-50. It would have been obvious to one of ordinary skill in the art at the time of the invention to use the teachings of Hogan in the injector of Mizzy in order to provide a convenient method of determining who received injections and the location of the injections. The use of a needle-free injector is taught by Landau. It would have been obvious to one of ordinary skill in the art at the time of the invention to use the teachings of Landau in the device of Mizzy and Hogan to provide an injector that helps overcome a recipient's fear of needles.

***Allowable Subject Matter***

Claims 5-7, 12, & 17-20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

Applicant's arguments filed 7/10/06 have been fully considered but they are not persuasive.

Applicant argues that the reference do not teach a marking assembly that is activated upon post-injection venting, the examiner disagrees. The broadness of the wording of injecting and post-injection it is the examiner's position that the statement post-injection can mean after the point of time that the needle has entered the subject, therefore the Mizzy in view of Hogan and Landau references still read upon the claim. The applicant's specification also does not define the term "post-injection" and therefore since the device is seen to activate the marking assembly after the actuation of the syringe, see Hogan col. 13 lines 37-39, it is deemed that the device of Mizzy in view of Hogan and Landau does indeed activate the marking assembly upon post injection.

Applicant argues that the prior art fails to suggest the needle-free injection device, the examiner disagrees. The device of Landau teaches the use of a needle-free injector and wherein one of ordinary skill in the art would know that the use of a needle-free injector would provide an injector that would help with injections for those with a

fear of needles. Also, the applicant does not state where Hogan teaches away from such a device and why. It is the examiner's position that Hogan does not teach away from a needle-less injector with respect to the marking assembly.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Benjamin Huh whose telephone number is 571-272-8208. The examiner can normally be reached on M-F: 9:00 AM - 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Sirmons can be reached on 571-272-4965. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3767

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

BIAH

BHH

KEVIN C. SIRMONS  
SUPERVISORY PATENT EXAMINER

Handwritten signature of Kevin C. Sirmons in cursive script.